

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
 MIAMI DIVISION
 Case 01-4319-CIV-KING

SYLVIA ALLEN

Plaintiff,

vs.

R.J REYNOLDS TOBACCO COMPANY,
 and PHILIP MORRIS INCORPORATED
 Defendants.

MIAMI, FLORIDA

FEBRUARY 14, 2003

FRIDAY - 1:30 P.M.

AFTERNOON SESSION

TRANSCRIPT OF JURY TRIAL PROCEEDINGS
 BEFORE THE HONORABLE JAMES LAWRENCE KING,
 UNITED STATES DISTRICT JUDGE
 VOLUME 1B

APPEARANCES:

FOR THE PLAINTIFF:

NEAL A. ROTH, ESQ.

Grossman and Roth

Penthouse One - Grand Bay Plaza
 2665 South Bayshore Drive
 Miami, FL 33133 - 305/367-8666
 (Fax) 305/367-0297

STUART GROSSMAN, ESQ.

Grossman and Roth

Penthouse One - Grand Bay Plaza
 2665 South Bayshore Drive
 Miami, FL 33133 - 305/367-8666
 (Fax) 305/367-0297

1 FOR THE PLAINTIFF:

2 ANDREW B. YAFFA, ESQ.
 Grossman and Roth
 3 Penthouse One - Grand Bay Plaza
 2665 South Bayshore Drive
 4 Miami, FL 33133 - 305/442-8666
 (Fax) 305/285-1668

5

6 FOR THE PLAINTIFF:

7 JAY COHEN, ESQ.
 Grossman and Roth
 8 Penthouse One - Grand Bay Plaza
 2665 South Bayshore Drive
 9 Miami, FL 33133 - 305/442-8666
 (Fax) 305/285-1668

10

11 FOR THE DEFENDANT R.J. REYNOLDS:

12 BENJAMINE REID, ESQ.
 Carlton Fields
 13 International Place, Suite 4000
 100 S.E. Second Street
 14 Miami, FL 33131-9101 - 305/539-7222
 15 GREGORY M. CESARANO, ESQ.
 Carlton Fields
 16 International Place, Suite 4000
 100 S.E. Second Street
 17 Miami, FL 33131-9101 - 305/539-7222
 18 AMY FURNESS, ESQ.
 Carlton Fields
 19 International Place, Suite 4000
 100 S.E. Second Street
 20 Miami, FL 33131-9101 - 305/539-7222
 21

22 ROBIN A. SCHMAHL, ESQ.
23 Jones, Day, Reavis & Pogue
24 3500 Suntrust Plaza
25 303 Peachtree St.
Atlanta, GA 30308-3242 - 404-521-3939

3

1 FOR THE DEFENDANT PHILIP MORRIS INC.:
2 NORMAN A. COLL, ESQ.
3 Shook, Hardy & Bacon, LLP
Miami Center, Suite 2400
201 South Biscayne Blvd.
4 Miami, FL 33131-4332 - 305/358-5171
5

6 KENNETH J. REILLY, ESQ.
Shook, Hardy & Bacon, LLP
7 Miami Center, Suite 2400
201 South Biscayne Blvd.
Miami, FL 33131-4332 - 305/358-5171
8

9 STACEY A. KOCH, ESQ.
Shook, Hardy & Bacon, LLP
10 Miami Center, Suite 2400
201 South Biscayne Blvd.
11 Miami, FL 33131-4332 - 305/358-5171
12

13 REPORTED BY:

14 ROBIN MARIE DISPENZIERI, RPR
Official Federal Court Reporter
15 Federal Justice Building, Ste. 1127
99 Northeast 4th Street
16 Miami, FL 33132 - 305/523-5108.
17
18
19
20
21
22
23
24
25

4

1 INDEX TO WITNESSES

2 Witnesses:	Direct	Cross	Redirect	Recross
3 Verna Safra	5			
4 Susan Smith	10			
5 Reading of Testimony of	13			
Andrew Schindler resumed				
6 Jaime Engel	14			

1 AFTERNOON SESSION

2 THE COURT: Thank you. Be seated, please. Sorry
3 about the delay. Judge Marcus and I were trying to work on a
4 draft, some administrative things that we had to send out in a
5 draft. We had to send it e-mail. Got held up. I'm sorry.

6 [The jury returns to the courtroom.]

7 THE COURT: Thank you. Be seated, please. Next
8 witness.

9 MR. GROSSMAN: Mrs. Safra.

10 COURTROOM DEPUTY: Please state your full name
11 spelling your last name for the record.

12 THE WITNESS: Verna Safra, S-a-f-r-a.

13 VERNA SAFRA, PLAINTIFF'S WITNESS, SWORN.

14 DIRECT EXAMINATION

15 BY MR. GROSSMAN:

16 Q. Good afternoon, Mrs. Safra.

17 A. Good afternoon.

18 Q. We met today for the first time?

19 A. Correct.

20 Q. You know I am Stuart Grossman. I represent the Allens.

21 A. Yes, I do.

22 Q. Have you ever testified in this courtroom before?

23 A. No, I have not.

24 Q. Whoever is at this podium is going to ask you questions.

25 But if you can address your remarks to the jury. Just relax.

1 If you can lean into the microphone and try to speak loudly if
2 you can.

3 A. Okay.

4 Q. Tell the folks your full name.

5 A. My name is Verna Safra. [DELETED].

6 Q. Do you know Sylvia Allen?

7 A. Yes, I have known Sylvia Allen for 42 years.

8 Q. How about her husband, Bob?

9 A. And Bob also.

10 Q. How was it that you came to meet Mr. and Mrs. Allen?

11 A. We were looking for a photographer for our wedding. We
12 were in our early twenties. I met them through my father. I
13 think we might have been their first or second wedding that
14 they photographed, 42 years ago.

15 Q. You and your husband, his name is?

16 A. Lenny Safra.

17 Q. You are still married for about --

18 A. 42 years.

19 Q. You were the first wedding that they did?

20 A. Correct.

21 Q. Prior to that time did you know the Allens?

22 A. No, I had not met them. When we met them for our wedding
23 photographs we became very friendly immediately and through the
24 years.

25 Q. As the years went by did you and your husband have

1 children?

2 A. Yes, two.

3 Q. Did your family have very special occasions that required
4 the use of professional photographers?

5 A. Absolutely. They were there to do it all. Both of them.

6 Q. Both of them doing photography work?

7 A. Correct.

8 Q. As you know, this case is about Bob and his life and
9 Sylvia's life together. Could you describe them in a
10 professional way. When they worked professionally, how did
11 they appear to you?

12 A. Extremely professional, having a lot of fun with being
13 together and what they did. Just being there and supporting
14 each other.

15 Q. Was there ever a time that Bob was unable to do the work
16 that he was asked to do?

17 A. Yes, when he got sick.

18 Q. I mean before he got sick, was there ever a time that Bob
19 was unable to do photography?

20 A. No.

21 Q. Were these events important to your family?

22 A. Yes, we did a Bas Mitzvah, a Bar Mitzvah, two weddings, my
23 son and daughter.

24 Q. Were albums made?

25 A. Absolutely. Absolutely. To this day, they are still a

8

1 part of our life. They are still a part of our family. I
2 don't think it would have been a wedding, or a special
3 occasion, without them.

4 Q. Would you describe Bob for the jury?

5 A. He was fun-loving. Very sweet, very kind. Never even
6 swatted a fly. I mean, just always joking, having fun.

7 I remember when we first met we were all pretty poor.

8 Bob would make his famous fried chicken. Bob and LuAnne, Bob
9 and Sylvia's oldest child. We would all hang out and laugh a
10 lot. He was just so sweet and so kind. I am sorry.

11 Q. How would you describe their marriage for the jury, please?

12 A. They had a very symbiotic relationship because of the
13 business. Being in that atmosphere with your spouse for all of
14 those years and being able to maintain a relationship, I
15 thought, was pretty remarkable. I don't know if I could do
16 that with my husband. Taking care of the children, taking care
17 of her mother. They were just always there for each other.

18 Q. Did Bob Allen smoke?

19 A. Yes, he did. I never saw him without a cigarette.

20 Q. You have been an observer of theirs for nearly 40 years?

21 A. Over.

22 Q. Has Sylvia's life changed since Bob's death?

23 A. Yes, she is like a totally different person. It's almost
24 like she lost herself since Bob was gone.

25 Q. Are these your observations? Tell us about them.

9

1 A. These are observations. She is very melancholy. She is
2 still having a hard time getting past the mornings. Doesn't
3 seem to be able to get past that point. Sylvia is a very
4 strong woman. I don't see that right now. I haven't seen that
5 since Bob's death.

6 Q. Do you still care for her as a friend?

7 A. Yes, absolutely.

8 Q. You are still in touch?

9 A. Absolutely.

10 Q. So the process has gone on since the 40th-plus year?

11 A. Absolutely.

12 Q. Is Sylvia still working?

13 A. She is trying to, yes. She is trying to carry on. I can
14 see how difficult this is.

15 Q. Did Bob have a sense of humor?

16 A. Tremendous, tremendous.
17 Q. Fun fellow?
18 A. Absolutely, absolutely. Kind, kind, kind. Generous.
19 MR. GROSSMAN: Thank you, Ms. Safra.
20 MR. CESARANO: No questions, Your Honor.
21 THE COURT: Thank you. You may step down. Thank you.
22 [Witness is excused.]
23 MR. GROSSMAN: We are calling our next witness, now.
24 Susan Smith.
25 THE COURT: Okay.

10

1 THE WITNESS: My name is Susan Smith.
2 SUSAN SMITH, PLAINTIFF'S WITNESS, SWORN.
3 DIRECT EXAMINATION

4 BY MR. GROSSMAN:
5 Q. Tell the jury your name, please.
6 A. My name is Susan Smith.
7 Q. Where do you live, please?
8 A. [DELETED]. Did you need my
9 address?
10 Q. No.

11 You have come on your own volition to testify?

12 A. Yes, indeed.

13 Q. We met today for the first time during the lunch hour?

14 A. That is correct.

15 Q. Have you ever testified in a court of law before?

16 A. Not actually testified. I advocated for one of my
17 patients. That's it. I didn't sit for something like this.

18 Q. This is our jury. If you would, please, direct your
19 responses to them. We won't be long with you, Mrs. Smith.

20 A. Okay.

21 Q. Please tell the jury something about yourself.

22 A. I am a licensed clinical social worker. I am a
23 psychotherapist. I work with people who struggle with pretty
24 serious drug addiction problems. I work in Broward County. I
25 have a private practice.

11

1 Q. You are not here as an expert witness?
2 A. No, as a friend.
3 Q. Tell the jury about your relationship with Mr. Bob and
4 Mrs. Sylvia Allen, please.
5 A. That would be my pleasure. Bob was like a brother to me.
6 Sylvia is like a sister to me. I have known them for almost
7 forty years. I have met them when my sister and I was looking
8 for a photographer. We were directed to Sylvia and Bob's
9 studio. We were so young then. We met them and have been
10 friends ever since. They were like family.

11 Q. How long ago was that?

12 A. Let's do the math. I am 59. I was 20 years. 39 years
13 ago.

14 Q. You went to their studio then?

15 A. Yes.

16 Q. That's where you met?

17 A. I best-friended them.

18 Q. Did you maintain a close friendship?

19 A. A very close friendship for many, many years.

20 Q. Describe Bob.

21 A. Bob was a very special person. I was a little overcome
22 when I saw these pictures. He was a very gentle gentlemen.
23 From the old school. He was an old-fashion guy. He was funny
24 and smart and warm and a very gifted photographer. He was a
25 very good friend and a great father.

12

1 Q. What did you just say?
2 A. He was a great father and husband as well.
3 Q. Can you describe their marriage to the jury?
4 A. They had a very close marriage. They laughed a lot. They
5 raised some wonderful children. They were extremely close.
6 And for heaven's sake, they stayed together for 40 years. What
7 does that tell you in today's world. It was a great love
8 story.
9 Q. My last questions deal with changes with Sylvia since Bob's
10 death. I know she is seated in the courtroom. Tell the jury
11 how she has changed. How has the loss of Bob affected her?
12 A. In my opinion it affected her very greatly. It's like you
13 lose a part of yourself. I am not saying that Sylvia seems
14 lost. She is a very capable and talented person. Something is
15 missing. You can see that. There's like a hole in the side
16 that used to be there. And that's what's missing.
17 Q. Okay. I am not going to keep you any longer.
18 MR. GROSSMAN: No further questions.
19 MR. CESARANO: No questions, Your Honor.
20 THE COURT: Thank you.
21 MR. GROSSMAN: Your Honor, we have cut down
22 Mr. Schindler's deposition during the noon hour, the rest of
23 it. We would like to complete it at this time.
24 THE COURT: Thank you. Go ahead.
25 MR. COHEN: We will start on page 6,660, line 23.

13

1 MR. GROSSMAN: This is the continuing of volume 2 of
2 Mr. Schindler that we had read just before lunch.
3 MR. COHEN: We will read through the next page, okay.
4 MR. GROSSMAN: Yes, sir.
5 [Reading of Testimony of Andrew Schindler resumed.]
6 MR. COHEN: Go to page 6,701.
7 MS. FURNESS: Jay, could you give the line numbers for
8 all the pages that you read.
9 MR. COHEN: Yes, I am going to give them to Robin.
10 Go to page 6,717, starting on the bottom, line 25.
11 Go to page 6,723, beginning on line 11.
12 Go to page 6,729.
13 Go to page 6,733, beginning on line 9.
14 Go to page 6,747, starting on the bottom.
15 The next page on the bottom.
16 Page 6,752, starting at the bottom.
17 On the bottom of the page.
18 Page 6,775.
19 Turn to page 6,801.
20 Next page.
21 THE COURT: Is that it?
22 MR. GROSSMAN: Yes, Judge, may we call our next
23 witness?
24 MR. YAFFA: Your Honor, at this time the plaintiffs
25 would call Jamie to the stand.

14

1 THE COURT: All right.
2 THE WITNESS: Jamie Roberta Engel. J-a-m-i-e, last
3 name, E-n-g-e-l.
4 JAIME ENGEL, PLAINTIFF'S WITNESS, SWORN.
5 DIRECT EXAMINATION
6 BY MR. YAFFA:
7 Q. Good afternoon.
8 A. Good afternoon.
9 Q. If you could try to speak into the microphone so everybody
10 can hear you and relax.
11 A. I will try.

12 Q. Take a moment and tell the jury who you are.
13 A. I am the daughter of Bob and Sylvia Allen.
14 Q. Deep breath.
15 A. Deep breath. Bob Allen was my dad.
16 Q. How old are you?
17 A. 42.
18 Q. Are you married?
19 A. Yes, I am.
20 Q. Tell the jury who you are married to.
21 A. I am married to Bob Engel. We have three children.
22 Christopher, who is 11; Taylor, who just turned 10; and Ryan,
23 my little boy, who just turned 8.
24 Q. We know that your dad died in October, 1999, right?
25 A. That's correct.

15

1 Q. Can you tell the jury whether or not your children, Bob's
2 grandchildren, got an opportunity to meet Bob?
3 A. Yes, they did. We used to have family dinner every Monday
4 night. We have family dinner with my husband's parents on
5 Sunday, and then -- because my parents usually worked Saturday
6 and sometimes my parents had football on Sunday night. So
7 Monday night was family night. Since they were little. Monday
8 night was family night.
9 Q. Were you a close family?
10 A. Yes, very close.
11 Q. Tell the jury where you grew up.
12 A. In North Miami Beach, Florida. I attended Madonna in
13 Hollywood and went to college at Florida International
14 University also, which is where I met my husband.
15 Q. Did you graduate from the University of Miami?
16 A. No, I did not.
17 Q. Tell the jury how old you were when you finally moved out
18 of the house.
19 A. It was in 1979. When I went to college at the University
20 of Miami, I lived on campus there. How old I was in 1979.
21 Q. You were probably 18, 19 years old?
22 A. Probably.
23 Q. Do you think you probably got a recollection of what home
24 was like living with mom and dad back then?
25 A. Yes.

16

1 Q. Tell the jury about that.
2 A. It was always crazy with three kids. I had an older sister
3 and younger brother. Lots of activities going on. My parents,
4 when we were younger, we lived above their office. My
5 grandparents had owned a strip mall. There were three
6 apartments above that. We lived in one of the apartments. My
7 mother's parents lived in one of the other apartments. When my
8 dad's parents would come to live with us, they would stay in
9 the third apartment there. We were very close because we lived
10 upstairs and my parents worked downstairs. We were just always
11 together.
12 Q. Were you and your brother and sister always involved in the
13 business?
14 A. Well, we were always running around the office and the
15 building. I don't know if my sister really took pictures. But
16 my brother took pictures and I had a knack for photography
17 also.
18 Q. The jury also heard about mom being taught by your dad?
19 A. Yes.
20 Q. Did you ever go out and shoot photographs professionally
21 with dad?
22 A. Not really professionally. I would go on the jobs that

23 they would have, weddings and Bar Mitzvahs and things like
24 that. To earn some extra money we would help carry the camera
25 equipment in and out. When I was 16, 17 years old, I would do

17

1 a backup camera and do some video.

2 Q. Weddings?

3 A. Weddings, Bar Mitzvahs.

4 Q. Parties?

5 A. Yes.

6 Q. Let's talk a little bit about that. He was 64 years old
7 when he died. Did you have a good relationship with your
8 father?

9 A. Yes, we did. I guess it was a typical father-daughter
10 relationship. Because we were such a close-knit family we saw
11 each other constantly. He was always there when we had
12 football games and cheerleading and things like that. He went
13 to all of those different activities. We spent a lot of time
14 together as a family because the apartment was upstairs and the
15 office was downstairs.

16 Q. Would you say Bob was an involved father?

17 A. Yes.

18 Q. Would he go to your school functions?

19 A. Yes, he would. When I was in high school, I was in the
20 drama club and I sang in a lot of the plays. And he was always
21 right up there in the front row taking pictures.

22 Q. Was he a serious guy or fun to be around?

23 A. Fun to be around.

24 Q. He had a good sense of humor?

25 A. Yes.

18

1 Q. Did he always make you and your brother have a good time?

2 A. Yeah, he did.

3 Q. Was he a social guy or a recluse and he liked to be by
4 himself?

5 A. No, he was really social. He had a really great sense of
6 humor. He had a great ability to make everyone feel like a
7 friend.

8 When I was in high school, actually, if I would be out
9 with some friends, they always would want to go back to my
10 house because mom and dad would be home. When most of the
11 parents would be home in bed, our parents would be hanging out
12 because they were involved in football. Everybody was involved
13 in football, especially with the Dolphins at that time. They
14 would all come back and talk football.

15 I remember when I lived at the University of Miami, I
16 would get phone calls from my friends who were at my house at
17 midnight. They would drive by and see the light out and they
18 would stop in because they knew my parents would be up, and my
19 dad would make my friends spaghetti.

20 Q. He would make your friends spaghetti?

21 A. He would make my friends spaghetti. If my friends were on
22 their way home and saw the light out, they would always just
23 stop because they felt they were like second parents.

24 Q. Did they treat all of your friends that way?

25 A. All of my friends.

19

1 Q. Did your dad teach you values?

2 A. Yes.

3 Q. Did he teach you the value of family?

4 A. Yes.

5 Q. Was he a warm person?

6 A. Very warm.

7 Q. Was he always there to support you and your brother and

8 sister?

9 A. All the time.

10 Q. Was it obvious that he loved you and your family?

11 A. Very much.

12 Q. Did your dad work through some difficult times with the
13 kids?

14 A. Yes.

15 Q. Tell the jury about that.

16 A. I guess my sister, when she was in high school, started to
17 have a drug problem. That caused a lot of difficulty in our
18 house and concern with my parents trying to figure out how they
19 could handle that. It was a very difficult time, but we got
20 through it.

21 Q. The jury heard that dad developed a drinking problem at
22 some point in his life.

23 A. It was about that time when my sister had that problem he
24 began drinking in order to cope.

25 Q. Well, let's talk about that for a minute. That's the time

20

1 you think dad started to drink?

2 A. Right.

3 Q. I want the jury to appreciate how big a problem it was.

4 Was this really a problem in dad's life, the alcohol?

5 A. Well, he went to work every day and he functioned. He did
6 everything, attended all of our activities and continued with
7 his everyday responsibilities. I think it was just more at
8 night, when he got home, he would have a drink and he would go
9 in the room and lay down and go to sleep.

10 Q. Mom wouldn't agree with that?

11 A. No.

12 Q. Did mom try to get dad to stop?

13 A. Yes, she did.

14 Q. Did dad try to stop?

15 A. He did. He went to a program and went to some AA meetings.

16 So he tried.

17 Q. Was there ever a time that you recall that dad was unable
18 to be the father that you needed because of the issues the jury
19 heard about?

20 A. No, not at all.

21 Q. Was there ever a time when dad was unable to be a
22 supporting husband to mom?

23 A. No.

24 Q. Was there ever a time that he was not able to do his job or
25 anything else required of him?

21

1 A. No.

2 Q. You have told us about dad as a person and told us about
3 dad as a father. I want to ask you about whether or not you
4 can talk about dad as a lifelong partner and husband to mom.

5 A. I think I can.

6 Q. Tell this jury about mom and dad's marriage if you can.

7 A. They had a very different --

8 Q. Just take your time.

9 A. They had a very different relationship than I guess what
10 you see on television, which is you are married and a husband
11 goes to work and nowadays a wife goes to work, and then you
12 come home at night and have dinner and go to bed or do
13 whatever.

14 Our parents weren't like that because my parents were
15 not only husband and wife, but they were business partners and
16 they were best friends.

17 I am sorry.

18 Q. Take your time.

19 A. Which is funny because that's exactly what my husband and I
20 are like. We are best friends. We work together and he is my
21 husband. I guess their relationship rubbed off on me and the
22 person that I married too. They were just always together
23 because of the situation that they worked together and they did
24 everything together.

25 Q. Did they support each other?

22

1 A. Yes, they did.

2 Q. Was it obvious to you that they loved each other very
3 dearly?

4 A. Yes.

5 Q. The jury has heard that mom had an accident in the '80s.
6 Do you recall that?

7 A. Yes.

8 Q. Can you tell the jury whether or not dad supported mom
9 through her problems that surfaced after the auto accident?

10 A. Very much so. She had a brain injury and had short-term
11 memory loss in some situations. She became very, I will say,
12 paranoid. I don't know if that's the word, but very cautious
13 all the time about not wanting to forget anything, putting film
14 in the camera and stuff. My dad was always the one to back
15 that up, to plug in all the equipment when they were going on
16 trips or getting ready for a job. He was the one making sure
17 that he took care of all the details.

18 Q. Did she come to rely on dad after she had the accident and
19 suffered the brain injury?

20 A. Yes.

21 Q. We will come back and talk about how mom is doing since
22 dad's passing. I do want to ask you a couple questions about
23 his smoking. I want you to think back as best as you can and
24 tell the jury if you can ever recall dad not smoking.

25 A. I always remember dad with a cigarette in his hand or pack

23

1 in his pocket.

2 Q. Do you recall the kind of cigarettes dad smoked?

3 A. I think they were Benson & Hedges. They were in a
4 mint-green package.

5 Q. This is Exhibit Number 526. It is in evidence. Does that
6 resemble the mint-green pack that you saw?

7 A. Yes, it does.

8 Q. It is Benson & Hedges 100 menthol. Do you recall dad ever
9 smoking anything other than Benson & Hedges?

10 A. Not to my recollection.

11 Q. Can you tell the jury whether or not dad smoked the
12 cigarettes until after he could physically not take out a pack
13 and continue to light up?

14 A. Yes, he did.

15 Q. He continued to smoke even after he was diagnosed?

16 A. Yes, he did.

17 Q. Did there ever come a time in your life that you can
18 remember where you talked to dad about his smoking?

19 A. Yes. In high school I remember we had a program at the
20 school on stopping smoking and the dangers of smoking. I
21 remember that part of the program was to get people to stop
22 smoking. It was the Great American Smokeout, I think was the
23 name of it. You would try to get people to stop smoking or you
24 would quit, if you smoked, for one day.

25 I remember I asked my dad to stop smoking. He smoked

24

1 anyway. He said that was a bunch of garbage. If they were bad
2 for you, they wouldn't be selling them.

3 Q. Was that the attitude that your father expressed to you

4 throughout your life?
5 A. Yes.
6 Q. Did you develop a health problem because of dad's smoking?
7 A. Yes, I had a virus in my eye. I was undergoing treatment
8 for it. I couldn't be around any smoke.
9 Q. Did he try to comply with mom's request and began smoking
10 outside at that point in time?
11 A. Right. He was out on the patio with a cigarette or with a
12 cigarette when he walked the dog in the morning.
13 Q. Did dad ever try to stop smoking?
14 A. Yes, he did. I know he tried hypnosis and that Nicorette
15 Gum or whatever, some type of a gum, and cutting down -- I
16 guess, I don't know if you would call it cold turkey, but
17 reduce the number of cigarettes that he would smoke.
18 Q. Do you remember how dad would act when he was trying to
19 stop?
20 A. Very cranky, very irritable, not very fun to be around.
21 Q. Do you remember dad getting diagnosed with cancer?
22 A. Yes.
23 Q. Were you with mom and dad when dad was diagnosed?
24 A. I wasn't there. I was in Tampa at a business conference.
25 They called us.

25

1 Q. This was in January of 1999?
2 A. Yes.
3 Q. Do you remember the time frame in between being diagnosed
4 in January and dad's unfortunate passing in October?
5 A. Yes.
6 Q. Tell the jury about those nine months, what happened and
7 what you went through.
8 A. We went through a lot of pain. Just trying to do a lot of
9 things in a little bit of time. Things that you think you have
10 years to do. We made it a point to try to get together more
11 than just on Monday nights and just really spend a lot more
12 quality time together.
13 But a lot of times, my dad, even if we had dinner
14 plans, he wasn't able to come because he had chemo treatment.
15 If he wasn't feeling good it would be very hard for him,
16 because I lived down in South Miami and they lived on Miami
17 Beach. It was a long drive. A lot of times it was very
18 difficult for him to take that drive. He never really wanted
19 the kids to load up in the car and drive all the way down
20 there. He didn't make it all the time, but we did the best
21 that we could to pack everything.
22 Q. You spent as much time as you could with him over the past
23 nine months?
24 A. Yes.
25 Q. Did you see dad change over that nine-month period?

26

1 A. Yes, I did.
2 Q. Was mom caring and supporting for dad?
3 A. My mother took him to all of his chemotherapy appointments,
4 and she would change his bandages when he got something on his
5 foot. I think he had treatment on that too. So he had
6 bandages and stuff. She would be at our house a lot just
7 changing the bandages and making sure he was comfortable.
8 Q. You mentioned a moment ago you tried to jam a lot of stuff
9 in a very short period of time?
10 A. Yes.
11 Q. Did you get a chance to tell him how much you loved him?
12 A. Yes, I did.
13 Q. Did he get a chance to tell you and your brother and sister
14 how he felt?

15 A. Yes, he did.
16 Q. Did you hear dad express to mom how he felt about her?
17 A. Yes, he loved her.
18 Q. Did she get a chance to tell him?
19 A. All the time.
20 Q. Mom talked about the opportunity that she had to renew her
21 vows with dad. Were you there to witness this?
22 A. Yes, I was.
23 Q. Tell the jury about that, please.
24 A. It was in the hospital. We knew that he didn't have a lot
25 more time. So it was in -- the Chaplin came in, and it was

27

1 there that they renewed his vows for him.
2 Q. We know dad died October 1, 1999. Were you there when dad
3 passed?
4 A. Yes, I was.
5 Q. Was mom there when dad passed?
6 A. It was the two of us.
7 Q. Can you take a moment and try to explain to this jury, it's
8 been almost three years, can you try to explain to this jury
9 how mom has done since dad's passing.
10 A. My mother is very lonely. It's very understandable because
11 when you had a relationship like my parents had for all of
12 these years and when they are your business partner and best
13 friend and they spent every day together, unless my dad was at
14 a football game that my mother couldn't go to, my mom would be
15 here, they were together all the time. When I see her she is
16 very lonely. We spend a lot more time together, although I
17 know that doesn't make up for it. She is lost without him.
18 It's like losing your right arm, I guess. It's just not there
19 anymore.
20 Q. You do your best to see her a lot?
21 A. Yes.
22 Q. Has she told you that she is afraid?
23 A. I don't know that she has used the word "afraid," but she
24 is nervous. She is concerned. She had my dad there for so
25 long.

28

1 Q. Is there any doubt, based on what you observed, based on
2 what you see day in and day out, based on what you hear, that
3 mom still misses dad every single day?
4 A. There is no doubt in my mind.
5 MR. YAFFA: Thank you very much.
6 MR. REILLY: No questions, Your Honor.
7 THE COURT: Thank you.
8 You may step down. Thank you. Before calling your
9 next witness, we will take a short recess. Ladies and
10 gentlemen, if you will step into the jury room.
11 [The jury leaves the courtroom.]
12 [There was a short recess.]
13 MR. REILLY: Judge, I have been informed that they
14 want to show the video of Doctor Wakeham and Mr. Bowling. I
15 would like to make one additional objection that I should have
16 made earlier. This program that it came from was performed or
17 taped in England. After it was done, there was a court order
18 entered by an England Court enjoining this from ever being
19 shown in the United States based on a finding that this
20 interview was obtained by fraud. I would be happy to provide
21 Your Honor with the England court's order.
22 THE COURT: I don't have any idea of what it is that
23 we are now discussing. You have hundreds and hundreds of
24 witnesses listed and thousands and thousands of documents.
25 Somebody bring me up-to-date what this is about. This is where

1 we are. We can't do this at the end of the day?

2 MR. REILLY: Well, they want to show it before the end
3 of the day --

4 THE COURT: Do they?

5 MR. YAFFA: Yes, sir. We argued this during the
6 pretrial hearings. All the exhibits are in evidence. It's
7 been ruled upon. It's ready to go. This is the final thing
8 that we are going to do in the plaintiff's case.

9 THE COURT: We had a video in that two-week pretrial
10 conference, did we?

11 MR. YAFFA: Yes, two of them.

12 THE COURT: Go ahead, Mr. Reilly.

13 MR. REILLY: There is an interview conducted by a
14 British broadcasting company. After the interview was -- in
15 which a court was the former president or chief executive
16 officer. And the other fellow was probably the vice president
17 in charge of Development.

18 THE COURT: They were videotaped giving a statement in
19 England, and consequently not only has it -- this been enjoined
20 from the United States, not only was it obtained by fraud, but
21 it can't be relevant to our litigation because it hasn't been
22 shown in the United States.

23 THE COURT: He says we went into all of this on a
24 prior occasion during that four- or five-day pretrial
25 conference.

1 I do not recall, now, you have to forgive me if I
2 overlooked something. I think I would certainly remember if
3 there was an allegation that something that was fraud evidence
4 would be presented to this jury. I don't remember hearing
5 that. As I say, I think I would have remembered something as
6 dramatic as that.

7 Can you enlighten me why this was -- if it was not,
8 why it was not brought to my attention back in December or
9 January -- January, I guess, that we had this pretrial hearing.
10 How is this coming up at this point? I am mystified at this
11 point.

12 MR. REILLY: Your Honor, all I can tell you is I went
13 as best I could over all the objections that I had for all the
14 exhibits that the plaintiff had. I realized -- they didn't
15 attempt to put it in until today. I didn't know they were
16 going to do that.

17 THE COURT: But they told you then, and I reviewed it.
18 Why did you not tell me that somebody had made up a false,
19 phony T.V.? That would have made a big impression on me at the
20 time. Why are we bringing this up?

21 MR. REILLY: It hasn't been shown to the jury. I
22 didn't know it was going to be shown.

23 THE COURT: My goodness sakes alive, they listed
24 hundreds and hundreds and several thousands of exhibits. We
25 went through all of them. We didn't have enough time to go

1 through the defendant's proposed witness list. All you had to
2 do is say, "Judge, this is a phony, false thing," and that
3 would have been the end of it right then and there.

4 But saying that you wanted to wait to see if they were
5 going to use it, I am sorry. That's like saying I will
6 elect to wait to stop you from making 2,200 objections to
7 documents that may have or may not have been used.

8 All you had to say about something this phony and this
9 fraudulent was that that's the case. Right off the bat, that
10 takes care of it. You contend that these are, what, phony

11 actors in this thing? Why is it phony? Forget what the judge
12 said. Tell me why it is a phony, false film to be shown to the
13 jury.

14 MR. REILLY: It's my understanding that the British
15 courts said the tapes were obtained through fraud.

16 THE COURT: That doesn't tell me anything. Maybe the
17 actors were supposed to show up at 10:00 and they showed up at
18 11:00. Now, tell me why this film leaking -- false bit of
19 evidence that the plaintiffs are offering to this jury. Again,
20 we will get to why you waited to the 11th and a half hour or
21 12th hour to bring it up.

22 Tell me, what is there about this document, this film,
23 or this evidence that is false, misleading and improper? Tell
24 me.

25 MR. REILLY: It's my understanding that the Court in

32

1 England --

2 THE COURT: That's semantics. That's semantics.

3 Maybe Mr. Reid can speak the English language. You tell me
4 what it is about this film that is false and fraudulent.

5 Mr. Reilly is not answering my question. All he says is a
6 judge has labeled this inadmissible. And has enjoined it.

7 Mr. Reid, maybe you can tell me? Mr. Reid, tell me.

8 MR. REID: I understand what Mr. Reilly is telling
9 you. I think Mr. Reilly can explain it better.

10 THE COURT: Somebody please tell me why. I am
11 accepting your word that it is fraudulent. Tell me why.

12 MR. REILLY: Representations were made as to what was
13 going to occur during this filming, and they apparently did not
14 occur to the satisfaction of the British court.

15 THE COURT: I guess we bring the people in and let me
16 find out if they can satisfy me or not. I can't say because
17 the British court sustained an objection or not that I should
18 follow suit. That's ridiculous. That's not an objection.

19 You are telling me at least one prior court has looked
20 at this and said do not use this film in England, and you are
21 representing to me that he says don't use it in America. Is
22 that what you are telling me?

23 MR. REILLY: Correct, Your Honor.

24 THE COURT: Well, that's nonsensical.

25 Do you know where this film is false or phony?

33

1 MR. YAFFA: There's nothing false and phony about it.
2 This is the head of Philip Morris interviewed in it. It has
3 been shown in the United States. It has been admitted to many,
4 many courts across the United States. Not that that has any
5 influence on you.

6 These are the positions that the company has made. I
7 made this argument to you before. We took the entire videotape
8 shown in the United States and sealed that portion which are
9 considered inadmissible to the tape. The only portions shown
10 to the jury are the portions that this Court ruled upon that
11 contained the interviews of the representatives of Philip
12 Morris. There is nothing inadmissible. They are relevant.
13 They contain clearly, clearly admissible comments made by the
14 representatives of the company, Judge.

15 THE COURT: You left with me three cassette tapes.
16 You also left me a transcript of what was on these tapes. Am I
17 correct on that? This was a month ago in the thousands of
18 objections we considered, is that correct?

19 MR. YAFFA: Yes, that's correct. You have two series
20 of tapes.

21 THE COURT: Did we ever -- and I was to make rulings.

22 I listened to Mr. Reilly or Mr. Reid, whenever they had an
23 objection, and looked at their written objections. I was left
24 with the objection that I was to rule upon the objections to
25 the questions that were asked, make rulings on that, give it

34

1 back to you, and you were to snip, cut and paste, or whatever
2 experts do with film. That's what I did. Is that your memory
3 of what I did?

4 MR. YAFFA: Your Honor, your recollection is right on
5 point. There was two sets of videotapes. One was the
6 congressional hearings. I sent you copies. You looked at
7 them. You had me go back and cut and paste.

8 THE COURT: Go ahead.

9 MR. YAFFA: Then we had another set of videotapes.
10 One of which was called Death in the West. You ruled on it
11 that we could not show it to the jury. You marked it I.D. and
12 you actually have it sealed in the file.

13 What we have are the portions of the Death in the West
14 that relate only to the interviews of their Philip Morris head
15 scientist and chief executive officers. The Court ruled that
16 these interviews are admissible.

17 THE COURT: What objections were made by the
18 defendants in this case to that exhibit -- give me the number
19 of that exhibit.

20 MR. YAFFA: This exhibit is 233B and 233c.

21 THE COURT: What objections did they make at the time
22 that I made this ruling?

23 MR. YAFFA: If you allow me to pull out the pretrial
24 stip?

25 THE COURT: Did they tell me that a British judge

35

1 barred this from any United States hearings?

2 MR. YAFFA: No, Judge, this is the first time we are
3 hearing of this.

4 THE COURT: These are the heads of the companies at
5 the time being interviewed, correct?

6 MR. YAFFA: Yes.

7 THE COURT: Do you know anything about the statement
8 that Mr. Reilly has had represented to me that someone tricked
9 or misled the tobacco company presidents in giving these
10 statements?

11 MR. YAFFA: Not a thing, Judge. I have no information
12 at all.

13 THE COURT: I guess what I have to do, Mr. Reilly, is
14 to tell you to call your first witness, and let's find out
15 whether your statement has any foundation.

16 MR. REILLY: Your Honor, I would be glad to bring
17 the --

18 THE COURT: How about bringing me a person in.

19 MR. REILLY: They are all dead --

20 THE COURT: Pardon me, that your person was -- misled
21 someone or tricked some one or misled me that a Judge -- I need
22 to know the merits, what it is that your president of your
23 company, how he was tricked and misled so as to make this
24 evidence inadmissible. I don't need the semantics of a judge
25 making that decision. Listen to him.

36

1 I have got all of this other stuff that has been
2 admitted in a bunch of other cases. I don't want to get into
3 the opinion of all of those other judges. What I want to know
4 is what proof, what evidence can you adduce or give to me that
5 will show that the presidents of your company or scientist from
6 your company was tricked into giving a statement and cannot be

7 given to the jury? Have you got such evidence? Can you get
8 it?

9 MR. REILLY: I can get it, Your Honor. These people
10 have been dead for many years, of course. I can't bring you
11 CEO. I can't bring --

12 THE COURT: Tell me who you can bring in. We have got
13 150 million people in the United States. I don't want to know
14 what you can't bring.

15 MR. REILLY: You have asked me --

16 THE COURT: It's your burden of proof, sir. You have
17 got to prove something. You make these very strong statements.
18 You are basing it on what some court made. You said you
19 haven't talked to the CEO that made the statement that he was
20 tricked because he is dead. Well, who did you talk to give you
21 the information?

22 MR. REILLY: Your Honor, what I have is the order of
23 the Court.

24 THE COURT: That's it? You don't have any proof at
25 all that the people that made these statements who were then

37

1 CEOs and presidents of your customer, did so totally tricked,
2 hypnotized, drugged or whatever?

3 MR. REILLY: No, Your Honor. What I can say is I can
4 bring you probably the transcripts of whatever pleadings that
5 occurred, the hearings that occurred, the basis for the ruling
6 by the Court. But can I bring you Mr. Bowling? I believe he
7 is dead. Can I bring you the pleadings and that sort of thing
8 and the pleadings that was presented to the Court in England?
9 Sure. And I will do that.

10 THE COURT: Can you bring me anybody that can say that
11 I know, whatever his name was, president of Philip Morris, when
12 he made this statement, was drugged, hypnotized, misled, didn't
13 know what he was saying or what he was doing? Can you bring me
14 anybody that has that kind of proof? That's the problem.

15 MR. REILLY: Your Honor, I don't know off the top of
16 my head whether there is a person that has that information
17 rather than the information provided to the Court in England.

18 THE COURT: Did anybody say that to the Court in
19 England?

20 MR. REILLY: I am confident. Otherwise the Court
21 wouldn't be able to make the ruling. Your Honor wouldn't enter
22 an order without hearing the evidence.

23 THE COURT: No, but, unfortunately, I am the only
24 judge that requires that proof. A lot of judges just listen to
25 whatever lawyers proffer. I do not in this court. I don't

38

1 take proffers of evidence. And lawyers stand up in mag court
2 across the street every day of our lives and say, "Judge, this
3 man should have a bond because he attended Sunday school every
4 day of his life." Proffer. Proffer. Proffer. I require oral
5 testimony.

6 I don't know what this judge in England did. He may
7 have accepted somebody's problem. The wife may have said,
8 "Judge, I saw this guy on a street corner last night and
9 tricked him into saying what he said." Or he could have said,
10 "I was tricked or I didn't feel well." I don't know what he
11 said.

12 Somehow or the other, if you are going to say a film
13 or an interview that the president of Philip Morris gave should
14 not be shown to the jury because it is false, and the reason it
15 is false, because the man was something, was drugged,
16 hypnotized, tricked, misled some way, then I have to have some
17 evidence of that before I exclude it.

18 It's pretty obvious, clearly relevant evidence when it
19 comes from the head of your company if it's about the subject
20 matter of your suit. That then gets presented to the jury as
21 his statement.

22 Now, if you wish to explain it, you know, bring in
23 somebody, his widow, his wife, to say that night -- whatever.
24 I don't know. He was hypnotized. He was getting senile.
25 Whatever. Then that's the weight to be given to it.

39

1 You have got the direct interview of the president of
2 Philip Morris about the subject matter of this suit, then to
3 just come in and say a judge in England said it can't be shown
4 in America and the other side says American judges have
5 permitted it to be shown. I guess some have and some haven't.
6 And you want me to admit it based upon what the judge in
7 England has said or the judge in Michigan or Nebraska has said.
8 That's not the way to keep it out of evidence.

9 MR. REILLY: Your Honor, may I suggest that you give
10 me until Tuesday morning?

11 THE COURT: Well, I wouldn't mind, except you didn't
12 even raise it a few months ago.

13 MR. REILLY: Judge, I am only human. If I missed some
14 of the objections, then I apologize to the Court. I have done
15 the best I could.

16 THE COURT: You have done a very, very thorough job up
17 to this point. But something like this, which seems to be an
18 interview of the president of your company, is giving false
19 evidence because he was tricked into making statements that he
20 shouldn't have made or didn't make, I guess is what the
21 submission is, and that you didn't raise that because you
22 didn't know whether they were going to use it or not when they
23 said they were going to use it. I was asked to rule upon it.
24 I did rule upon it. It looks like -- I don't know why you
25 waited.

40

1 It looks like you just decided not to do anything
2 about it until the last minute, which would have only the
3 effect of delaying the trial at a point when you could have
4 raised it thirty days ago. It's a lot like waiting and not
5 taking the deposition of a treating physician about some of
6 these things. Those are choices lawyers make for their
7 clients. They have the right to do that.

8 But then they can't complain if later on they should
9 have done something, they should have gone and taken the
10 interview or should have gone and taken the deposition. It
11 makes me very suspicious of this objection coming at this
12 minute. Based on -- not on any personal evidence but based on
13 something you read from a judge.

14 How critical is this? Can it be brought up by
15 rebuttal testimony from the plaintiff? And then we could give
16 them some time to go find a witness that will tell us why the
17 president of this company gave false or misleading, wrongful
18 statements based upon fraud committed upon him when he gave the
19 statement? Is that doable? Is that a way to handle this mess
20 that is now being brought up in the 12th hour?

21 MR. YAFFA: May I respond, Your Honor?

22 THE COURT: Yes.

23 MR. YAFFA: We planned our case to move it in. This
24 evidence is critical. They knew we were going to show it to
25 the jury. Most importantly, Judge, Mr. Reilly is telling you

41

1 is not what these guys said was under duress or under hypnosis.
2 These men said what they said voluntarily. What he is saying

3 is this tape was released somehow inappropriately. These
4 people said what they said voluntarily. When the Court says
5 what they said, here is what they said. You are going to see
6 they said exactly the same thing over and over again that they
7 said publicly. They knew internally one thing, yet externally
8 they knew another thing.

9 MR. REILLY: Your Honor, Mr. Yaffa is exactly wrong.
10 The Court knew that it couldn't be shown. Couldn't be shown in
11 England and couldn't be shown in the United States.

12 MR. YAFFA: But it has.

13 THE COURT: The difficulty with all of this is just
14 semantics again. That's all. Just wordsmithing. That's all
15 it is. You say you want to label the tape inadmissible because
16 in your opinion you say so. No one is telling me why, why, why
17 it is fraud. What are the facts? This is exactly the same
18 argument that we had that I considered two or three nights ago.
19 I kept asking, pleading with the lawyers, to stop labeling
20 things in boxes like, well, he is an expert. Tell me why.

21 I am asking you, and really for the last time -- I am
22 not trying to embarrass you, but I would like to know what it
23 is that makes the statement false that the two men gave on this
24 film? What is it? Not that a judge later on looked at it and
25 said, "I am going to enjoin that." It could have been released

42

1 or anything. I don't know what it was. I want somebody to
2 tell me what it is, what it is that makes the testimony, the
3 proof, false.

4 If it's false, it shouldn't go to the jury. If it's
5 truthful evidence, relevant evidence, then it should go to this
6 jury. Now, will you please tell me why it is false.

7 MR. REILLY: Judge, what I know is, as I stand here
8 this morning, have I reviewed the pleadings filed in England,
9 have I looked personally at the Court order, no, I have not.
10 It's my understanding that a Court order was entered based on
11 how the interview was obtained.

12 I don't mean by that that they were caught on the
13 street or they were drunk or drugged. That's not what I am
14 saying to you.

15 THE COURT: What are you saying? Please, now we are
16 getting to it. What are you saying?

17 MR. REILLY: It's my understanding that certain
18 representations were made to either Philip Morris or
19 Mr. Bowling or Doctor Wakeham about what this interview would
20 be about, what the subject matter was going to be and the
21 questions. Then it turned out to be a completely different
22 thing.

23 THE COURT: Right, and they answered them anyway. Did
24 they answer them falsely?

25 MR. REILLY: I don't know if they answered them

43

1 falsely.

2 THE COURT: See, that's the key to all of this. If
3 people walk down the street and a newspaper reporter comes up
4 to them and says, "Gee, I want to buy you a cup of coffee,
5 Mr. Bowling, whatever CEO name, and I am the cousin of Prince
6 Philip," and Mr. Bowling sits down and has coffee. "By the
7 way, let me talk to you about tobacco," then he goes on tape.
8 If Mr. Bowling answered the question truthfully, then that
9 probably is relevant, admissible evidence. He may have been
10 lied to outrageously by the reporter or the T.V. reporter,
11 whoever it was.

12 The bottom line of admissibility is the truthfulness
13 of the testimony. The truthfulness of it. The fact that

14 Mr. Bowling wouldn't have talked to him if he knew he was a
15 reporter, wouldn't have talked to him if he knew he was the
16 cousin of Prince Philip, in my silly example, that's all
17 semantics, all wordsmithing.

18 Bowling may have been fired by his board of directors
19 because he did a stupid thing and sat down and had an interview
20 with somebody. The question is not whether he had the
21 interview or whether he was stupid. The question is whether he
22 told the truth.

23 Now, if you represent that this interview contains
24 untruthful matter that would mislead the jury on the facts that
25 he is relating, that's serious stuff. That's something that I

44

1 don't want to have happen and won't permanent to happen.

2 I am guessing that we are engaging in semantics by
3 saying, well, some judge wouldn't let that in. And the
4 plaintiffs say it's critical to their case. Why on earth this
5 is coming up at this point in time, I don't know. Unless you
6 are able to represent to me that someone, your client or
7 someone, has told you in good faith and sincerity and you
8 believe them, that these statements are false, then I don't
9 know. Maybe you can enlighten me. Other than a judge says
10 that it shouldn't be shown.

11 MR. REILLY: Your Honor, I have no information as to
12 whether or not the answers and questions given were false. I
13 am not attempting to represent that.

14 I do know in terms of the relevance of these
15 interviews to this case, an American, not someone living in
16 England, when the Court enjoined it so that it couldn't be
17 shown in the United States.

18 Obviously, Mr. Allen could not have possibly seen this
19 video, could not have possibly seen this English interview.
20 When the plaintiffs say it's critical to this case, what does
21 that mean? Does that mean that Mr. Allen was influenced in
22 some way by what we are going to see? Absolutely not. You can
23 ask them to make a reputation to you that Mr. Allen could have
24 possibly scene this interview, but they can't because he
25 couldn't have.

45

1 THE COURT: I rule this is totally immaterial to
2 whether he saw it or not. This is going to the question of
3 whether or not the statements being released by your company in
4 which they could have seen in hundreds of newspapers and beamed
5 down to the internet -- a man like Mr. Allen would have seen
6 it, advertisements, that's part of the issues in this case. I
7 didn't make it that way. You all have made it that way. The
8 answer to all of this is that objection to the testimony must
9 be, of course, not only relevance, but that some element of it
10 would be misleading or false. You cannot in good faith make
11 that representation.

12 You are relying on the fact that a British judge said,
13 well, CEO was tricked into giving this, and he did it. He was
14 tricked into doing it and our sense of fairness says that we
15 can't tape. Even though it's truthful. That wouldn't wash
16 under our rules of evidence. That's not a ground to exclude
17 it.

18 You will argue as to the weight. You will have a full
19 thirty minutes that each side has to argue the case.
20 Approximately thirty minutes. Maybe a little longer. You have
21 thirty minutes to tell the Appellate Court all the error I have
22 committed. So think about your closing argument.

23 Basically, the Court overrules your objection. It is
24 untimely. It is not based on any relevant basis for excluding

25 untruthful, improper evidence. If you discover that the

46

1 statements made were falsely made, knowingly made, for all I
2 know the CEO of your company may have lied to the interviewer,
3 may have made false statements, may have made so for a personal
4 reason. Maybe they wanted to get even with Philip Morris. If
5 you can find it, bring it in and present it to the jury and
6 they can consider whether that statement is true or false.

7 That's the kind of evidence we need. Not that
8 somebody listened to it and decided that no, it shouldn't be
9 introduced.

10 The objection is overruled without any prejudice to
11 your right to rebut the falsity or the truthfulness of the
12 statement as made.

13 MR. REILLY: Your Honor, may I have an instruction to
14 the jury if I am able to demonstrate to Your Honor that this
15 video could not have been and was not shown in the United
16 States?

17 THE COURT: No, no, no. That has got nothing to do
18 with it. You are here in a trial in the Southern District of
19 Florida. The question is admissibility in this case, not
20 whether it was admitted in some other trial. If you show to me
21 and bring in evidence, which I invite you to do, that this
22 evidence is false, that these statements that people made are
23 false, then in that situation, if you or Mr. Reid move for a
24 mistrial in this case, and it's shown that we permitted to have
25 admitted into evidence a false statement and information, then

47

1 in all probability your mistrial is going to be granted. And
2 that is your remedy right then and there.

3 You now say you laid back and waited. You knew this
4 was coming a month ago, but you waited until today, until
5 literally the last minute of the plaintiff's case, and your
6 reason was that you didn't know whether they were going to give
7 it or not.

8 MR. REILLY: No, that's not quite right, Your Honor.

9 You keep cutting me off, Your Honor.

10 THE COURT: It really has a credibility with the
11 Court.

12 MR. REILLY: I am trying to be honest every time I am
13 before you. You sometimes cut me off.

14 THE COURT: I have listened to you and the idea that
15 what you are saying is truthful. I listened to you when you
16 stood up and said that's bad evidence.

17 But you told me just a little while ago -- what you
18 told me just a little while ago was that the reason that you
19 brought this up here at 3:25 in the afternoon, we told the jury
20 we were going to let them go at 4:00, was that you didn't know
21 whether plaintiffs were going to offer this evidence or not.

22 Now you told me that, sir.

23 MR. REILLY: I did, Your Honor. But I first told
24 you --

25 THE COURT: You told me a lot of things first. I am

48

1 focusing --

2 MR. REILLY: You cut me off again, Your Honor.

3 THE COURT: -- because you chose to wait until now to
4 raise this. You chose to wait to see if they were going to
5 offer it. You said you knew that they were going to offer it
6 because they said they were a month ago. You knew and had me
7 go through all the exercise of ruling on the other objections
8 to the Death in the West or whatever this tape is called, and I
9 did all of that. You chose not to bring this objection up

10 until the last minute. Now that is untimely. Untimely, sir.
11 I'm sorry.

12 MR. REILLY: That's not what I told you, Your Honor.
13 THE COURT: The record will show what you told me. I
14 think everyone in the courtroom heard it. I won't embarrass
15 you by asking your co-counsel if they heard it, but I am sure
16 they heard it.

17 Bring the jury.

18 How long will this take to play?

19 MR. YAFFA: It will take ten minutes.

20 THE COURT: Is that your last evidence?

21 MR. YAFFA: We have got the life tables, and we have
22 got a stipulation that Mr. Grossman needs to raise.

23 [The jury returns to the courtroom.]

24 THE COURT: Be seated, please.

25 MR. GROSSMAN: Your Honor, we have gone over the life

49

1 tables. May I publish them to the jury?

2 THE COURT: If they are stipulated to and agreed, show
3 them to the jury.

4 MR. GROSSMAN: This is from the National Vital
5 Statistics reports from the Centers for Disease Control and
6 Prevention, National Center for Health Statistics, National
7 Vital Statistics system. The latest one is volume 47, number
8 13.

9 It takes individuals by race and sex. Mr. Allen died
10 at age 64. At that time he had a life expectancy of another
11 16.5 years. He had another 16.5 years to live under normal
12 life expectancy. Mrs. Allen, who is of her race and sex, has
13 another 19.5 years to live. Mr. Allen, age 64; for Mrs. Allen
14 at age 64, another 19.5 years to live, from the vital
15 statistics of United States Government.

16 THE COURT: All right. Your next witness.

17 MR. GROSSMAN: Your Honor, at this time we are going
18 to show the jury two short videotapes. That will conclude our
19 evidence with the exception of stipulation or judicial notice.
20 Thank you.

21 MR. YAFFA: The interview that you are about to see is
22 an interview of Doctor Helmut Wakeham, the chief scientist of
23 Philip Morris.

24 MR. REILLY: Could we have the date of this, Your
25 Honor, and the location where the interview occurred?

50

1 THE COURT: The date and location, if you know.

2 MR. YAFFA: I don't know, Your Honor. I have got it
3 in evidence in the transcript. If you would like me to
4 retrieve it I can. It's in evidence.

5 THE COURT: I understand that. How long will it take
6 you? We are trying to get the jury out of here early today.
7 How long approximately?

8 MR. YAFFA: I think it was in the 1970s.

9 MR. COHEN: August 14, 1976, Your Honor.

10 THE COURT: 1976, August 14. Where was it taken?

11 MR. COHEN: Broadcasting company. London, England.

12 THE COURT: London, England. Go ahead. Show it to
13 the jury.

14 [Videotape was played.]

15 MR. YAFFA: The next videotape we are going to show,
16 Your Honor, is of James Bowling, the vice president of Philip
17 Morris, taken August 16, 1976. It was an interview by Peter
18 Taylor of the Tames Broadcasting Company in London, England.

19 THE COURT: Show the film.

20 [Videotape was played.]

21 THE COURT: All right, your next witness?
22 MR. GROSSMAN: Your Honor, that concludes the
23 plaintiff's case at this time, with the exception of a matter
24 that we can bring up outside the presence of the jury. The
25 plaintiff rests with that one exception, the library book

51

1 issue. We have no more witnesses.

2 THE COURT: All right, ladies and gentlemen, we are
3 going to recess for the long weekend. Monday is a federal
4 holiday of some sort. I don't really know what it is.

5 MR. REID: President's Day.

6 THE COURT: So we will not be in session on Monday.

7 With respect to when you report here on Tuesday, I
8 have certain legal matters that I have to go over with counsel.
9 I do not know how long this will take. I suppose that we can
10 do it this evening or do it first thing Monday morning if we
11 come in. So I am thinking about when you will need to report.

12 If we allocated a couple of hours --

13 MR. REID: Could we come up and chat about this? I
14 have an idea. Well, I think ten minutes will be fine.

15 THE COURT: We can stay here all evening if you would
16 like. I assume that if we told the jury to come here at 10:00
17 and we all know that we can come in here at 7 or 8 in the
18 morning or we can stay here until 7 or 8:00 tonight.

19 MR. REID: Tuesday morning, Judge.

20 MR. GROSSMAN: Tuesday.

21 THE COURT: All right. 10:00 on Tuesday. Ladies and
22 gentlemen, we have got a whole floor of witnesses, so please be
23 careful. Don't accidentally or innocently overhear a witness
24 talking to somebody. Don't let anybody talk to you about the
25 case. Don't talk to anybody about the case. If there's

52

1 anything in the newspaper, television or radio, don't read it,
2 watch it or listen to it. We will see you at 10:00 Tuesday
3 morning.

4 [The jury leaves the courtroom.]

5 [3:45 p.m.]

6 THE COURT: All right. This is the time when counsel
7 for the defense would normally make their motions. Mr. Reid?

8 MR. REID: Yes, sir, I was going to request, and this
9 is what I was going to suggest, that Tuesday morning that we
10 make our motions, just the motions without any extended
11 arguments. We have a witness scheduled to be in first thing
12 Tuesday morning.

13 THE COURT: Well, I am going to listen to your
14 arguments. I don't want you all to hand me a three-foot high
15 stack of papers that has been generated over the weekend just
16 to give me a chance to read.

17 I don't want to do that. I am going to hear from you.
18 I am going to listen to your arguments. You have made quite
19 clear that you have prepared the defense to this case, and you
20 have raised a number of issues that we need to hear from you
21 on. I want you to have the time that you need to do that.
22 That's what I am getting at.

23 MR. REID: What I am going to suggest is that we make
24 the motions so they are in the record, and we would argue them
25 Wednesday morning instead of Tuesday morning. That way we can

53

1 have the witness that is scheduled to come in, come in and we
2 would have made the motions.

3 THE COURT: I am sorry, Mr. Reid. I didn't quite
4 follow what you are saying. You can make a formal motion now
5 in two minutes. We are talking about the time to argue your

6 motion. You are suggest doing that when?
7 MR. REID: Wednesday morning.
8 THE COURT: What would we do all day Tuesday?
9 MR. REID: We would have a witness.
10 THE COURT: You would go ahead without prejudice to
11 your right to argue the motions after the witness is heard,
12 fully preserving the defendants' right to argue their -- in
13 civil cases is it Rule 29?
14 MR. REID: I forget the rule. It's not a directed
15 verdict.
16 THE COURT: All right. I am comfortable with
17 reserving to you by a statement that you are fully protected if
18 you are comfortable with that.
19 MR. REID: What I wanted to do is think about it so I
20 am sure that I cover all the bases. Then we make that motion
21 on Wednesday morning. We put our witness on Tuesday morning
22 and we argue Wednesday morning.
23 THE COURT: We couldn't do it from 8 to 10 on Tuesday
24 morning? That gives you two hours, an hour to a side if you
25 need it? Would that not -- you would have the weekend.

54

1 MR. REID: Sure, we could do that.
2 THE COURT: Then you would be doing it in the
3 traditional sequence, although there is nothing wrong with
4 doing it on Wednesday morning. At least at that point, then,
5 whatever occurred we would be able to pick up at 10:00 and go
6 right on forward.
7 MR. REID: I realize we don't always have choices. If
8 I were going to decide, I would prefer to argue it the next
9 morning.
10 THE COURT: Well, I just don't know what we are going
11 to do for two hours or even an hour on Tuesday morning. I
12 could have told the jury to be here at 10:00. I suggest that
13 you make your formal motions right now?
14 MR. REID: No, Tuesday morning.
15 THE COURT: Okay.
16 MR. REID: At, say, 9:30 we could come in.
17 THE COURT: You feel that would not take more than 30
18 minutes to make that formal statement and argue it the next
19 morning?
20 MR. REID: Yes, sir.
21 THE COURT: Mr. Reilly.
22 MR. REILLY: Judge, do you have some opposition to us
23 providing you with any written material on this?
24 THE COURT: No, I don't have a bit. But I don't want
25 you to bring in a wheelbarrow like you all have been doing in

55

1 this trial and say, "Judge, here is our are formal motion." We
2 don't want that. That's what I am saying. If you are going to
3 dump up here a foot-high stack of material that has been
4 computer generated over the next three days by your staff and
5 say, "Judge, here this is and you go read it," that's what I
6 don't want to have. It's that simple.
7 You may file anything that you think is appropriate
8 and proper. Fine. I have no difficulty with that. Whether I
9 have an opportunity, I wouldn't even have an opportunity if you
10 hand it to me Tuesday morning and read it between trying to
11 listen to your witnesses and ruling on the matters that we have
12 to rule on and then read it on Monday night. I don't know how
13 I can do all of that.
14 Therefore obviously you have a right to file anything
15 you want to file. I am just telling you, if you come in here
16 with 1,000 pages of material and then you go to Appellate

17 Court, if you ever get that far, if we ever get a verdict, and
18 say, "Judge, the judge didn't read the thousand-page
19 memorandum," the Appellate Court has the opportunity to put it
20 off for a month. They don't understand why trial judges get
21 tired of reading these things over the weekend. That was my
22 remark.

23 You can file whatever you want to file. I will do my
24 best to consider it. I have been reading a lot of stuff that
25 didn't get introduced into evidence. I made a lot of rulings,

56

1 anticipatory rulings, which I never do in most cases. I have
2 done it to try to accommodate this jury and keep it running
3 smoothly. I am getting to the point where I can't do it
4 anymore.

5 I will do the best I can. The hours that this is
6 consuming, running up to 14, 16 hours a day, is getting to be a
7 little too much.

8 All right, then, I will meet with you at the -- what
9 is submitted here, Mr. Grossman; that we convene at 9:30 on
10 Tuesday morning and they will have 15, 20 minutes or so or a
11 half hour, if need be, for a formal motion for directed
12 verdict, which frankly couldn't take three minutes to the side,
13 the formality. The plaintiff will not have to respond to
14 anything because nothing will be argued. And the argument will
15 have to occur on Wednesday morning, which may have to be from
16 8:00 until 10:00, or it may have to be at some other time. I
17 don't know what we are doing.

18 The parties are willing -- the defendants are willing
19 to proceed in that fashion with the Court's statement into the
20 record that the defendants will not be prejudiced by not making
21 their full argument on their motion at the time that they
22 submit their formal motion, and that they will be fully
23 protected to raise that on Wednesday morning and make such
24 argument as they wish. And there is no prejudice to doing
25 that.

57

1 Now, do you understand that and agree?

2 MR. GROSSMAN: Yes.

3 MR. REID: You had wanted our proposed jury
4 instructions. I have a set to give you. I do not have the
5 verdict form because that is still in flux. I will hand up an
6 original and one to the Court.

7 THE COURT: All right. I believe Mr. Cohen, the other
8 day, had something. I said hold it. I will get all at once.
9 Could you, Mr. Cohen, look for these proposed jury instructions
10 and any form verdict you may have. The form verdict is very
11 important. I know that we will give that a lot of thought and
12 consideration. I like to have the benefit of your thinking
13 before we have to take it up at the charge conference.

14 What has just been handed up to me are the defendant,
15 R.J. Reynolds Tobacco Company and Philip Morris USA, requested
16 jury instructions. I have two copies, an original and one
17 copy. We will have the clerk mark the original in evidence.

18 At some point in time -- and, Mr. Reid, you know
19 better than I, when getting to where we need the verdict form,
20 but I would like it several days in advance, even though it be
21 rough or modified later. At least I would like to see
22 counsel's respective positions or thoughts on that. We can
23 change all of this around at a charge conference.

24 MR. REID: Yes, sir.

25 THE COURT: For the plaintiff, you had your requested

58

1 instructions several days ago.

2 MR. GROSSMAN: Yes, sir. We have had them since the
3 beginning. They are here now. They are marked up. But I will
4 give them to you, Judge. I am sorry.

5 THE COURT: Do you want to submit clean copies on
6 Tuesday morning?

7 MR. GROSSMAN: Tuesday, if that's okay.

8 THE COURT: Tuesday will be fine.

9 What I am going to do, Mr. Reid, let me give these
10 back to you simply for this reason. Ms. Kramerman was trying
11 to catch a plane and left, so she can't mark it in evidence.
12 Tuesday morning, then we will get it all at one time. She will
13 mark it in evidence and she will have it.

14 I don't care who the witnesses are. I know that we've
15 been following the rule that they will be made known to the
16 other side. Mr. Reid has indicated that he has done that. I
17 am sure that he has. My question or inquiry was -- is do we
18 have enough, and please make sure you have enough, witnesses to
19 take us through the day on Monday. And you have any
20 guesstimate, estimate, guesstimate, you are not held to
21 anything, but can you give me any sort of an estimate as to how
22 long the defendants may need?

23 MR. REID: We are hoping to do it in five or six days.

24 THE COURT: Okay. Fine. You are not bound to that.

25 You are not limited to that.

59

1 All right, Tuesday morning, 9:00, and 10:00 with the
2 jury.

3 [Proceedings concluded at 3:40 p.m.]

4

5

6

7 I hereby certify that the foregoing is an accurate
8 transcription of proceedings in the above-entitled matter.

9

10

11

12

13

14

15

DATE ROBIN MARIE DISPENZIERI, RPR
16 Official Federal Court Reporter
Federal Justice Building, Ste. 1127
17 99 Northeast 4th Street
Miami, FL 33132 - (305)523-5108

18

19

20

21

22

23

24

25